

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMEREN MISSOURI,

Defendant.

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. 11-CV-00077

Judge Rodney W. Sippel

**AMEREN MISSOURI'S RULE 12(b)(6) MOTION TO DISMISS**

Defendant Ameren Missouri ("Ameren"), by its attorneys, respectfully moves for dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), for the following reasons:

1. The Complaint alleges that Ameren Missouri's routine maintenance projects at its Rush Island power plant in Festus, Missouri violated the Prevention of Significant Deterioration ("PSD") and Title V provisions of the Clean Air Act ("CAA"), and the Missouri state implementation plan ("Missouri SIP"). The Complaint seeks hundreds of millions of dollars in civil penalties and injunctive relief.

2. The Court should dismiss the Complaint in its entirety because the Complaint lacks any factual allegations about the projects at issue. Instead of facts, the Complaint offers only verbatim quotes of regulations and conclusions of law, which cannot make out any plausible claim to relief under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

3. In the alternative, the Court should dismiss, as time-barred, most of the claims for civil monetary penalties. Under both the Clean Air Act and the Missouri SIP, any claimed violations of the PSD program (in Counts I and II) occurred, if at all, at the time the alleged projects took place and are not continuing violations. *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008 (8th Cir. 2010). The same is true for the related claims (in Counts III and IV) that Ameren Missouri violated the conditions of its Title V operating permit. The relevant statute of limitations, 28 U.S.C. § 2462, is five years, and all of the projects took place – and thus, those claims accrued – over five years ago.

4. Ameren Missouri has concurrently filed a memorandum of law in support of this motion.

WHEREFORE, for these reasons and those set forth in its accompanying memorandum of law, Defendant Ameren Missouri respectfully requests that the Court grant this motion and dismiss Plaintiff's Complaint in its entirety.

In the alternative, the Court should dismiss the claims for civil penalties that relate to: (1) all PSD claims (Compl. ¶¶ 68, 74); (2) Title V claims that allege a violation of the Title V operating permit's provision that references PSD (Comp. ¶¶ 48, 80, 89); and (3) Title V claims that allege a violation of the Title V operating permit's compliance certification provision (Compl. ¶¶ 77, 88).

Dated: March 14, 2011

Respectfully submitted,

Patricia Brown Holmes

Ronald S. Safer (*pro hac vice*)

Patricia Brown Holmes (*pro hac vice*)

Renee Cipriano (*pro hac vice*)

Steven J. Bonebrake (*pro hac vice*)

Matthew B. Mock (*pro hac vice*)

Schiff Hardin LLP

233 South Wacker Drive Suite 6600

Chicago, Illinois 60606

Phone: (312) 258-5500

Fax: (312) 258-5600

James J. Virtel

Armstrong Teasdale LLP

7700 Forsyth Boulevard Suite 1800

St. Louis, Missouri 63105

Phone: (314) 621-5070

Fax: (314) 612-2298

jvirtel@armstrongteasdale.com

*Counsel for Defendant Ameren Missouri*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2011, I electronically filed the foregoing **Ameren Missouri's Rule 12(b)(6) Motion to Dismiss** with the Clerk of Court using the CM/ECF system, which will cause an electronic copy to be served on counsel of record, who are listed below:

Justin A. Savage  
Andrew C. Hanson  
Bradford T. McLane  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Telephone: (202) 514-5293  
Facsimile: (202) 514-0097

Suzanne Moore  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Missouri  
Thomas Eagleton U.S. Courthouse  
111 South 10<sup>th</sup> Street, 20<sup>th</sup> Floor  
St. Louis, Missouri 63102  
Telephone: (314) 539-2547  
Facsimile: (314) 539-2309  
E-mail: Suzanne.Moore@usdoj.gov

Ilana Saltzbar  
Attorney-Advisor  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Alex Chen  
Senior Counsel  
Office of Regional Counsel  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

/s/ Patricia Brown Holmes  
Patricia Brown Holmes